



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

OBJECTION TO AN
APPURTENANT RIGHTS CLAIM

Form APRT-OBJ

For Official Use Only:

2012 SEP 19 PM 2:09

Instructions: Complete one (1) "Objection to an Appurtenant Rights Claim Form" (Form APRT-OBJ) for each Appurtenant rights claim to which you object.

- Any person or entity with a legal or material interest in the water may file written objections. Persons filing objections must serve copies of the written objection and all related documentation / evidence 1) on the applicant; and 2) on the Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.
- Appurtenant rights claimants will have an opportunity to submit a rebuttal to the written objections.
- For questions, contact the Commission's Stream Protection and Management Branch at (808) 587-0234.

A. OBJECTOR

NAME/COMPANY

Office of Hawaiian Affairs, Hui O Na Wai Eha and Maui Tomorrow

Contact Person

Pamela W. Bunn, Alston Hunt Floyd & Ing, for OHA; Isaac Moriwake, Earthjustice, for Hui O Na Wai Eha and Maui Tomorrow

Mailing Address

1001 Bishop Street, Ste. 1800, Honolulu, HI 96813 (Bunn); 223 S. King Street, 4th Floor, Honolulu, HI 96813 (Moriwake)

Phone

524-1800 (Bunn)

599-2436 (Moriwake)

Fax

524-4591 (Bunn); 521-6841

(Moriwake)

E-mail Address

pbunn@ahfi.com; imoriwake@earthjustice.org

Explain your legal or material interest in objecting to this Appurtenant rights claim.

See attached.

B. APPLICANT (As listed in the Public Notice)

NAME/COMPANY

MTP Operating Company, LLC, dba Maui Tropical Plantation

Surface Water Use Permit Application No.

2203

Mailing Address

1670 Honoapiilani Hwy., Wailuku, HI 96793

Identify all Tax Map Keys (TMK) related to this objection:

(2) 3-6-005-007

C. REASON(S) FOR OBJECTION

Select all that apply below. The objector has the burden of proof on all objections.

☒ The parcel was not used as a residence or for cultivation at the time of the Mahele.

☒ The Appurtenant right to water has been reserved or extinguished.

☐ There are materially false statements or representations in the claimant's application for Appurtenant rights.

Summarize carefully your objection and how approval of this Application would adversely affect your legal interests (Use separate page if needed):

Supporting documentation / evidence must be provided on separate sheets.

D. OBJECTOR SIGNATURE

☒ By checking this box (for electronic submissions) or signing below (for hardcopy submissions) indicates that the signatory understands and swears that the information provided is accurate and true to the best of their knowledge.

Print Name:

Pamela W. Bunn
Isaac Moriwake

Signature:

[Handwritten signatures]

Date:

19 September, 2012

FILE ID:

DOC ID:

0THF-R.3650.6

SWUP.2203.6

9982

Form APRT-OBJ 08/29/2012

ATTACHMENT TO OFFICE OF HAWAIIAN AFFAIRS' AND HUI O NĀ WAI 'EHĀ'S AND MAUI TOMORROW FOUNDATION, INC.'S OBJECTIONS TO APPURTENANT RIGHTS CLAIMS OF MTP OPERATING COMPANY, LLC, DBA MAUI TROPICAL PLANTATION

Explain your legal or material interest in objecting to this appurtenant rights claim.

Office of Hawaiian Affairs (“OHA”), Hui o Nā Wai ‘Ehā (“Hui”) and Maui Tomorrow Foundation, Inc. (“Maui Tomorrow”, and together with Hui, the “Community Groups”) are parties with legally established due process interests and standing in ongoing proceedings regarding the waters of Nā Wai ‘Ehā, Waihe‘e River and Waiehu, ‘Īao, & Waikapū Streams. OHA is statutorily and constitutionally mandated to protect the cultural and natural resources of Hawai‘i for its beneficiaries – native Hawaiians and Hawaiians. Haw. Rev. Stat. §§ 10-3(3), (5); Haw. Const. art. XI, § 1; Haw. Const. art. XII, § 2. The Hui is a community-based organization that was formed to protect and restore Nā Wai ‘Ehā’s water resources and the practices that depend on them, including traditional and customary Native Hawaiian practices. Maui Tomorrow, a community based-organization with over 1,000 supporters, is dedicated to protecting Maui’s natural and cultural resources, promoting principles of ecologically sound development, and preserving rural lifestyles on Maui.

OHA beneficiaries, and the Community Groups’ members and supporters, rely on, use, or seek to use surface water from the Nā Wai ‘Ehā surface water management areas and their nearshore marine waters for purposes including but not limited to fishing and gathering, agriculture, aquaculture, research, education, recreation, artistic activities, aesthetic enjoyment, spiritual observance, and traditional and customary Native Hawaiian practices. OHA beneficiaries and the Community Groups’ members and supporters own and reside on land along each of the streams within the Nā Wai ‘Ehā surface water management areas and hold appurtenant, traditional and customary, and public trust rights to Nā Wai ‘Ehā surface water. In sum, OHA and its beneficiaries and the Community Groups and their members and supporters have legally protected rights and interests in Nā Wai ‘Ehā surface water, which are legally and materially affected by and adverse with the claims of appurtenant rights at issue. At the Commission’s request, OHA and the Community Groups can provide further information regarding their rights and interests in this matter.

Summarize carefully your objection and how approval of this Application would adversely affect your legal interests.

The appurtenant rights to the land for which MTP Operating Company, LLC, dba Maui Tropical Plantation (“MTP”) has made its claim, TMK No. (2) 3-6-005-007 (the “Property”)¹ have been reserved by the Grantor and thus extinguished. *See Reppun v. Board of Water Supply*, 65 Haw. 531, 552, 656 P.2d 57, 71 (1982) (holding that a deed that attempted to reserve appurtenant rights to the Grantor had the effect of extinguishing them). The Deed by and between Wailuku Sugar Company, as “Grantor,” and The Hawaii Tropical Plantation, as “Grantee,” recorded on March 24, 1983 in the Bureau of Conveyances at Book 16933 Page 469 (attached as Exhibit “1”), in Exhibit “A” thereto, expressly **“except[s] from this deed, all surface waters and ground waters and water rights including any applicable riparian or other appurtenant or prescriptive rights as may now or hereafter exist with respect to the property or any part thereof[,]”** Exhibit “A” to Deed (Ex. 1), p. 7 (emphasis added), which were reserved “unto the Grantor and its successors and assigns.” *Id.* at 6. *See also* Limited Warranty Deed recorded in the Bureau of Conveyances on January 27, 2006 as Document No. 2006-017392, attached as Exhibit “2,” at pages 16-17 of Exhibit “A” thereto. Accordingly, the Property no longer has appurtenant rights, those rights having been reserved by Wailuku Sugar Company.

Moreover, OHA and the Community Groups note that the application’s supporting documentation fails to establish any cultivation or water use on large portions of the Property at the time of the Māhele. Among others, no cultivation or water use is established for Grants 2960 and 3043 to J. Boardman, Grants 2747:2 and 2342 to Eugene Bal, Grant 2069:1 to Kaai. *See Peck v. Bailey*, 8 Haw. 658, 661 (1867) (maintaining that absent “immemorial usage” of water, land grants “certainly could take nothing by having been a portion of the Ahupuaa”).

The Community Groups and OHA reserve the right to raise further objections if the objections above are not sufficient to refute the application’s appurtenant rights claims.

Approval of this application would adversely affect the rights and interests of OHA and its beneficiaries and the Community Groups and their members and supporters in Nā Wai ‘Ehā surface water because it would erroneously recognize priority

¹ It appears the Property is not currently owned by MTP.

claims of appurtenant rights to such water without legal and factual basis and contrary to established law, to the prejudice of the opposing rights and interests of OHA and its beneficiaries and the Community Groups and their members and supporters.

RECORDATION REQUESTED BY:

83- 29905

22 MAY 21 P2.00

AFTER RECORDATION, RETURN TO:

Security Title Co.

16933 469

When completed: Mail ()

Pick up () Phone:

DEED

KNOW ALL MEN BY THESE PRESENTS:

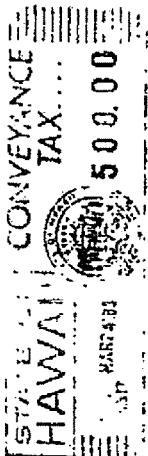
That WAILUKU SUGAR COMPANY, a Hawaii corporation, of Wailuku, Maui, Hawaii, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration to it paid by THE HAWAII TROPICAL PLANTATION, a Hawaii limited partnership, with principal place of business and post office address at 1200 College Walk, Suite 204, Honolulu, Hawaii 96817, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee and its successors and assigns:

ALL of those certain premises described in Exhibit "A" attached hereto and made a part hereof, subject, however, to the encumbrances mentioned in said Exhibit "A";

AND the reversions, remainders, rents, issues and profits thereof, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances to the same belonging or appertaining or held and enjoyed therewith, and all of the estate, right, title and interest of the Grantor both at law and in equity therein and thereto;

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns as aforesaid, forever, subject as aforesaid;

EXHIBIT "1"



17025
REGISTERED

16933 470

AND the Grantor, for itself, its successors and assigns, hereby covenants with the Grantee and its successors and assigns: THAT the Grantor is the owner in fee simple of the premises described in said Exhibit "A"; that the same are free and clear of and from all encumbrances except as mentioned in said Exhibit "A"; that it has good right to grant and convey the same unto the Grantee as aforesaid and will WARRANT AND DEFEND the premises described in said Exhibit "A" unto the Grantee forever against the lawful claims and demands of all persons claiming by, through or under the Grantor except as aforesaid.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officers this 24th day March, 1983.

WAILUKU SUGAR COMPANY

By James L. Higgins
Its VICE PRESIDENT
By Donald P. McLaughlin
Its Asst. Secretary

16933 471

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 1st day of March, 1983, before me appeared JAMES G. HIGGINS and HAROLD P. LUSCOMB, to me personally known, who, being by me duly sworn, did say that they are Vice President and Assistant Secretary, respectively, of WAILUKU SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of such corporation and that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors; and said JAMES G. HIGGINS and HAROLD P. LUSCOMB acknowledged such instrument to be the free act and deed of such corporation.

Pamela Jean Simon
Notary Public, State of Hawaii

My commission expires: 9/13/93

PARCEL I

All of that certain piece or parcel of land (being PORTIONS of Land Commission Award No. 432, Royal Patent No. 102 to ANTHONY SYLVA; Royal Patent (Grant) No. 3152 to HENRY CORNWELL; Royal Patent (Grant) No. 2904 to JOHN CROWDER; and Royal Patent (Grant) No. 3043 to JOHN BROADMAN; and ALL of Apana 4 of Land Commission Award No. 10160, Royal Patent No. 3148 to MAHOE; Royal Patent (Grant) No. 1146 to ANTONIO SYLVA; Apana's 1 and 2 of Land Commission Award No. 416, Royal Patent No. 41 to JOHN CROWDER; Apana 2 of Land Commission Award No. 455, Royal Patent No. 371 to HAA; Apana's 1 and 2 of Land Commission Award No. 462 to MAHUKA; Apana's 1, 2 and 3 of Land Commission Award No. 491, Royal Patent No. 3139 to Haawahine; Apana 2 of Land Commission Award No. 5324, Royal Patent No. 6374 to KEAKINI; Apana's 2 and 4 of Land Commission Award No. 5774, Royal Patent No. 4014 to KAAI; Apana's 1, 2 and 3 of Land Commission Award No. 8874, Royal Patent No. 3130 to KANEAE; Apana 1 of Royal Patent (Grant) No. 2747 to EUGENE BAL; Royal Patent (Grant) No. 2342 to EUGENE BAL; Royal Patent (Grant) No. 1674 to E. W. GLEASON; Apana 1 of Land Commission Award No. 236-I, Royal Patent No. 498 to CHARLES COPP; Apana 1 of Land Commission Award No. 3527, Royal Patent No. 3156 to KAMOHAI; Apana 1 of Royal Patent (Grant) No. 2069 to KAAI; and Royal Patent (Grant) No. 2960 to JOHN BROADMAN), being a portion of Lot 1 and all of LOT 2 and LOT 3, situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, containing an approximate area of 69.794 acres, more or less, and designated as a portion of Tax Map Key: 3-6-04-02; a portion of Tax Map Key:

3-6-05-07 and all of Tax Map Key 3-6-07-14, cross-hatched as shown on map attached as SCHEDULE "A".

Being all of the land acquired by the Grantor by and through the following:

1. DEED dated November 20, 1894, recorded on December 4, 1894, in said Bureau of Conveyances in Book 152 on Pages 86-89, by and between T. W. MacFARLANE and wife, EMILIE MacFARLANE (who releases her dower) and WILLIAM H. CORNWELL, no marital status shown, as Grantor(s), and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s), conveys, besides other lands.
 - a. Apana's 1 and 2 of Land Commission Award No. 416, Royal Patent No. 41 to JOHN CROWDER
 - b. Apana's 1 and 2 of Land Commission Award No. 462 to MAHUKA
 - c. Apana's 2 and 3 of Land Commission Award No. 5324, Royal Patent No. 6374 to KEAKINI
 - d. Apana's 2 and 4 of Land Commission Award No. 5774, Royal Patent No. 4014 to KAAI
 - e. Apana 1 of Royal Patent (Grant) No. 2747 to EUGENE BAL; and
 - f. Royal Patent (Grant) No. 2342 to EUGENE BAL; and
 - g. Royal Patent (Grant) No. 1674 to E. W. GLEASON
 - h. Portion of Royal Patent (Grant) No. 2904 to JOHN CROWDER; and
 - i. Portion of Royal Patent (Grant) No. 2960 to JOHN BROADMAN; and
 - j. Portion of Royal Patent (Grant) No. 3042 to JOHN BROADMAN; and

- k. Portion of Royal Patent (Grant) No. 2069 to KAAI
 - l. Apana 1 of Land Commission Award No. 236-I, Royal Patent No. 498 to CHARLES COPP
 - m. Apana's 1, 2 and 3 of Land Commission Award No. 8874, Royal Patent No. 3130 to KANEAE
2. DEED dated December 30, 1896, recorded on December 30, 1896 in said Bureau of Conveyances in Book 164 on Pages 475-477, by and between WILLIAM H. CORNWELL (who signs as Wm. H. Cornwell), no marital status shown, as Grantor, and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s); conveys:
 - a. Royal Patent No. 324, Land Commission Award No. 455 to HAA containing 35 acres, being all of Apana's 1 and 2, besides other lands.
 3. DEED dated April 4, 1898, recorded on April 11, 1898 in said Bureau of Conveyances in Book 176 on Pages 434-434, by and between J. A. PAAKIKI and husband Z. PAAKIKI, as Grantor(s), and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s), conveys:
 - a. Apana's 3 and 4 of Land Commission Award No. 5324, Royal Patent No. 6374 to KEAKINI
 4. DEED dated September 1, 1921, recorded on September 2, 1921 in said Bureau of Conveyances in Book 605 on Pages 418, by and between WAIKAPU AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation, as Grantor(s), and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s), conveys:
 - a. All of Land Commission Award No. 3527, Royal Patent No. 3156 to KAMOHAI, besides other lands, and all water rights
 5. DEED dated February 15, 1952, recorded on February 26, 1952 in the Bureau of Conveyances of the State of Hawaii in Book 2560, Page 57, from MAUI ASSOCIATES, LIMITED, a Hawaiian corporation, as Grantor(s).

TOGETHER WITH the following easements appurtenant to the land herein conveyed:

1. A perpetual easement and right to discharge surface water runoff, from the parking lot and other improved areas from time to time constructed on the land herein conveyed, into existing drainage channels and culverts paralleling Honoapiilani Highway situated within Second Division Tax Map Key 3-6-4-1.

2. A perpetual easement and right to install, replace, maintain, repair and use, within Tax Map Key 3-6-4-1, (a) a waste water pipeline, and (b) an injection well or wells, together with the non-exclusive right of ingress thereto and egress therefrom over the Grantor's adjoining land, the exact location of the waste water pipeline easement and the injection well easements to be designated by the Grantee, subject to the approval of the Grantor, which approval shall not be unreasonably withheld.

3. As an alternative to the easement provided for in paragraph 2 above, at the option of Grantee, a perpetual easement and right to install, replace, maintain, repair and use, a waste water pipeline, together with the non-exclusive right of ingress thereto and egress therefrom, over the Grantor's adjoining lands to the north, to connect with the public sewerage pipeline servicing the new Wailuku Heights development; the exact location of the waste water pipeline easement will be designated by the Grantee, subject to the approval of the Grantor, which approval shall not unreasonably be withheld taking fully into account the economic and technical conclusions of the civil engineering study, now being undertaken at the request of Grantor and Grantee

with respect to the pipeline and its connection to the public sewerage pipeline; Grantee shall further have the right to use any easements or rights of way available to Grantor for the purpose of enabling the waste water pipeline to cross under or over Waikapu Stream, Waiko Road and Kuikahi Drive to connect with the Wailuku Heights sewerage pipeline to the north of the latter road.

4. A perpetual easement and right to install, replace, maintain, repair and use, within the area labelled proposed water storage easement and proposed water pipeline easement on the plan attached hereto as Schedule "B", (a) a water storage tank, and (b) water pipelines between the western boundary of the land herein conveyed and the aforesaid water storage tank, together with the non-exclusive right of ingress thereto and egress therefrom over the Grantor's adjoining land, the exact location of the water pipeline easements and the water storage tank easement to be designated by the Grantee (within an area not to exceed 5,000 square feet for the storage tank and fifteen feet wide for the water pipeline easements), subject to the approval of the Grantor, which approval shall not be unreasonably withheld.

5. A perpetual nonexclusive waterline easement in the area designated proposed waterline extension by C. Brewer on the plan attached hereto as Schedule "C", for waterlines to connect to the existing public waterline at the corner of Kemoa Place and Wilikona Place, and thence running to the northern boundary of the land herein conveyed, subject to the right of Grantor to dedicate the proposed waterline extension to the County of Maui for public purposes.

6. A perpetual nonexclusive easement for roadway purposes, for maintenance and agricultural support, but not for movement of visitors except to the extent approved by Grantor, over and across the existing dirt road: (i) in Second Division Tax Map Keys 3-6-4-2 and 3-6-5-7 commencing at Honoapiilani Highway, approximately 180 feet north of the southern property line of the Land herein conveyed, thence running in a westerly direction to the vicinity of Waihee ditch, thence in a northerly direction between Waihee Ditch and the western boundary of the land herein conveyed, (ii) in Second Division Tax Map Key 3-6-5-7 over and across R.P. 4014 L.C. Aw 5774:1 to Kaai and Grant 3152 to Henry Cornwell (reserving, however, unto the Grantor the right to relocate said existing dirt road); and (iii) in Second Division Tax Map Key 3-6-4-2 over and across the existing 12 ft. wide right-of-way easement to Honoapiilani Highway. Grantor shall have the right to realign but not materially relocate those portions of said roadway described in (i) and (iii) above.

The easements described in paragraphs 2(b) and 4(a) shall be exclusive easements. The easements described in paragraphs 2(a), 3 and 4(b) shall be non-exclusive and Grantor reserves the right to use the easement areas for purposes which do not interfere with Grantee's use of the easements but Grantor shall not grant easements to third parties in the easement areas unless Grantor shall require the third party to agree for the benefit of Grantee not to interfere with Grantee's use of the easements.

RESERVING, HOWEVER, unto the Grantor and its successors and assigns:

1. A perpetual nonexclusive easement and right to install, replace, maintain, repair and use, in the easement area, shown in green in Schedule "D" attached hereto, an underground water pipeline, together with the right of ingress thereto and egress therefrom over the land herein conveyed, subject to that certain unrecorded Agreement concerning water pipeline of even date herewith.

2. A perpetual exclusive easement to maintain, repair and use that portion of the existing Waihee Ditch situated on any portion of the land herein conveyed.

3. A perpetual nonexclusive easement to maintain, repair and use the settling pond shown on Schedule "E" attached hereto.

4. A perpetual nonexclusive easement for roadway purposes over and across the portion of the existing dirt road described in item 6 of Grantee's appurtenant easements situated on any portion of the land herein conveyed.

5. A perpetual nonexclusive easement and right to install, replace, maintain and use, in the easement area shown as "B" water pipeline easement on Schedule "F" attached hereto, together with the right of ingress thereto and egress therefrom over the land herein conveyed.

6. And, excepting from this deed, all surface waters and ground waters and water rights including any applicable riparian or other appurtenant or prescriptive rights as may now or hereafter exist with respect to the property or any part thereof; provided however, that this exception is subject to the provisions of that certain unrecorded water agreement which provides in certain circumstances, for the right of Grantee, to drill a well or wells and to draw

therefrom up to 500,000 gallons of water per day. ^{16933 479}

SUBJECT, HOWEVER, to:

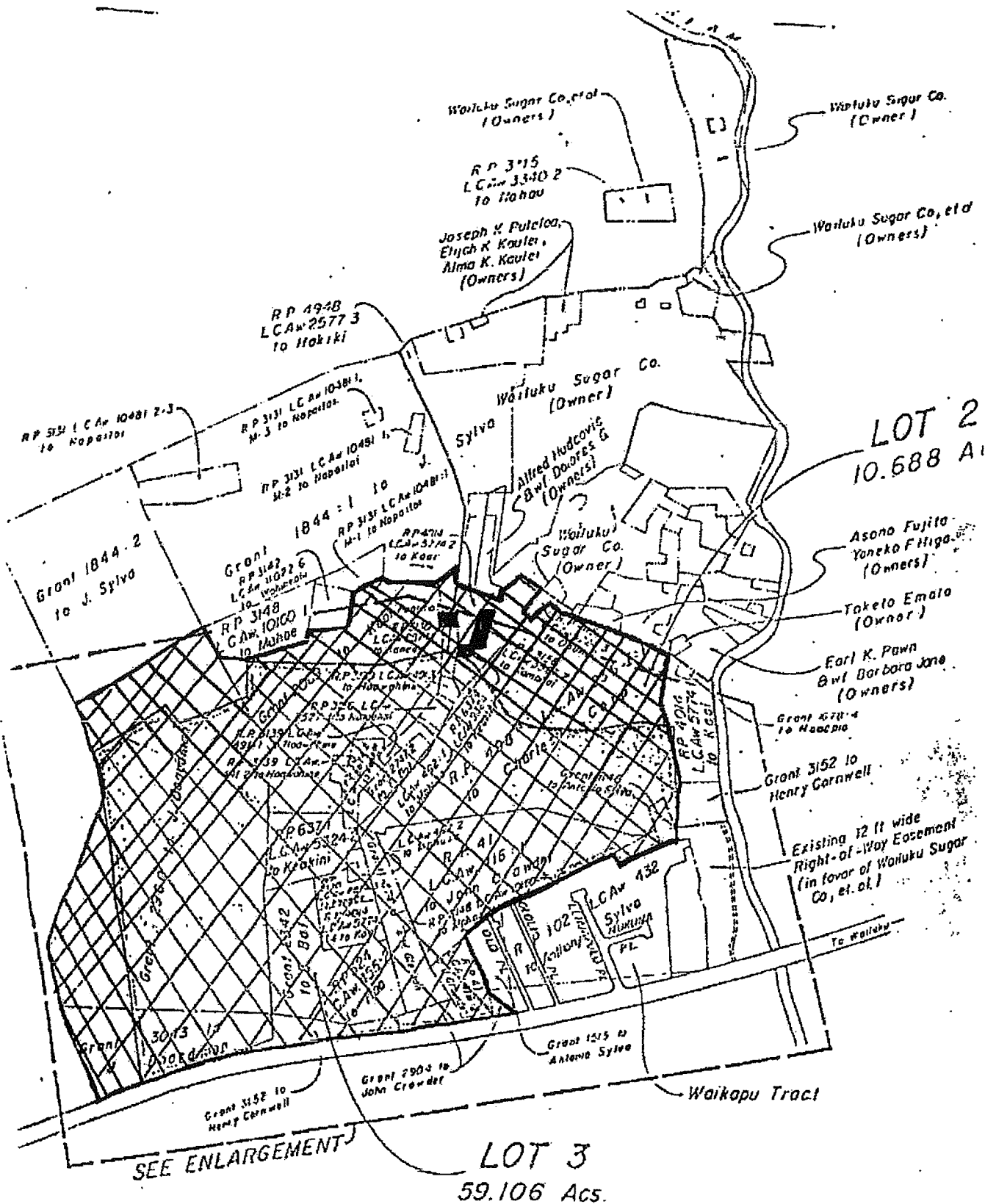
1. Reservation in favor of the State of Hawaii of all mineral and metallic mines in the following Awards and Grants:

Land Commission Award 236-I	Grant 1674 Land
Commission Award 416	Grant 2069 Land
Commission Award 455	Grant 2342 Land
Commission Award 491	Grant 2747 Land
Commission Award 3527	Grant 2960 Land
Commission Award 5324	Grant 3043 Land
Commission Award 5774	Grant 1146 Land
Commission Award 8874	Royal Patent 3143
Royal Patent 102	



2. Rights of native tenants in the following Grants:

Grant 2342	Grant 1146
Grant 2747	
Grant 2904	
Grant 2960	
Grant 3043	

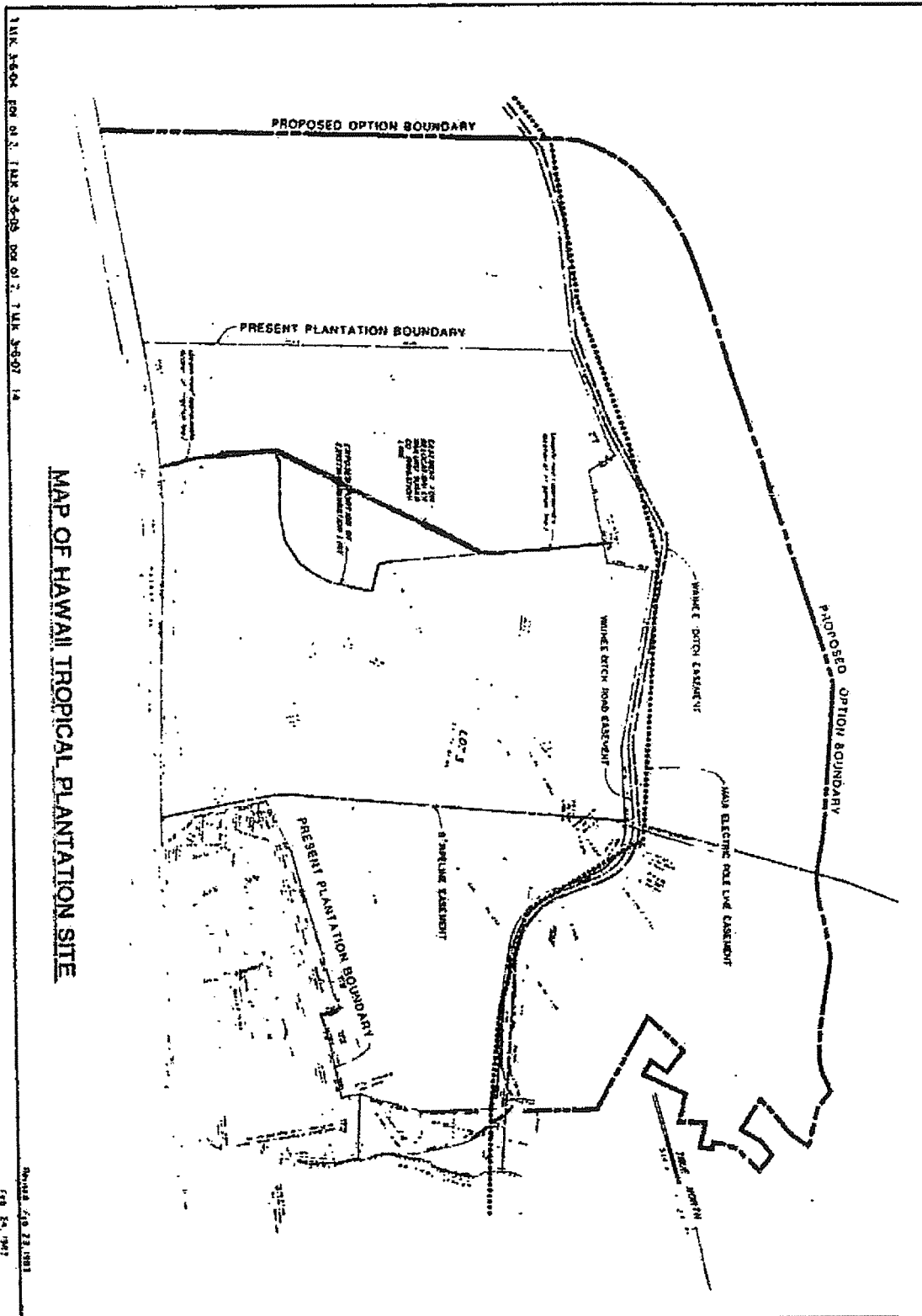
3. That certain Grant dated April 30, 1974, in favor of Maui Electric Company, Limited, recorded in said Bureau in Book 9921, Page 1, granting a nonexclusive right and easement to build, etc., maintain and operate pole and wire line or lines, etc., for the transmission of electricity, etc., along, across, over, through and upon the land herein conveyed.



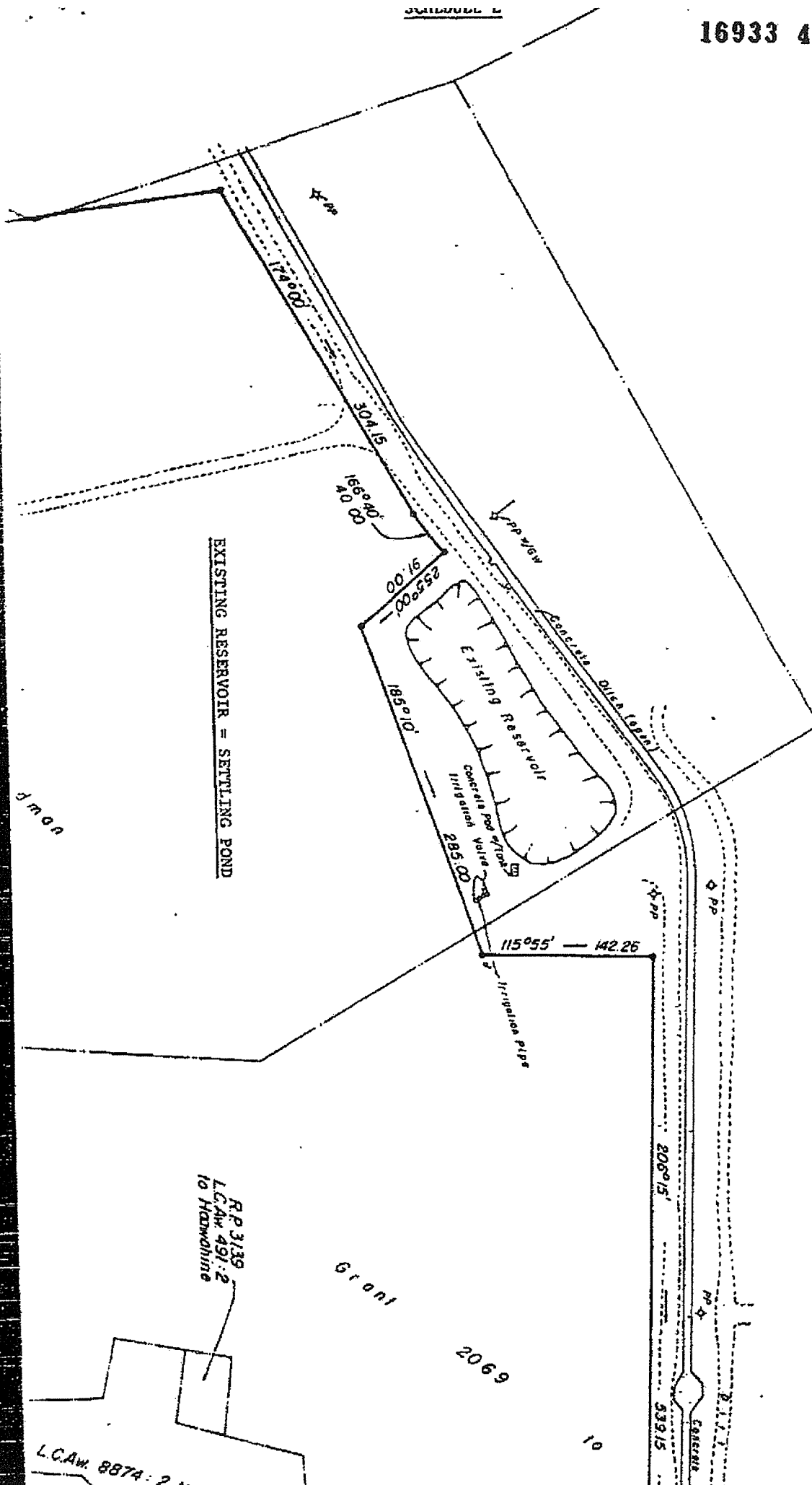
SCHEDULE A

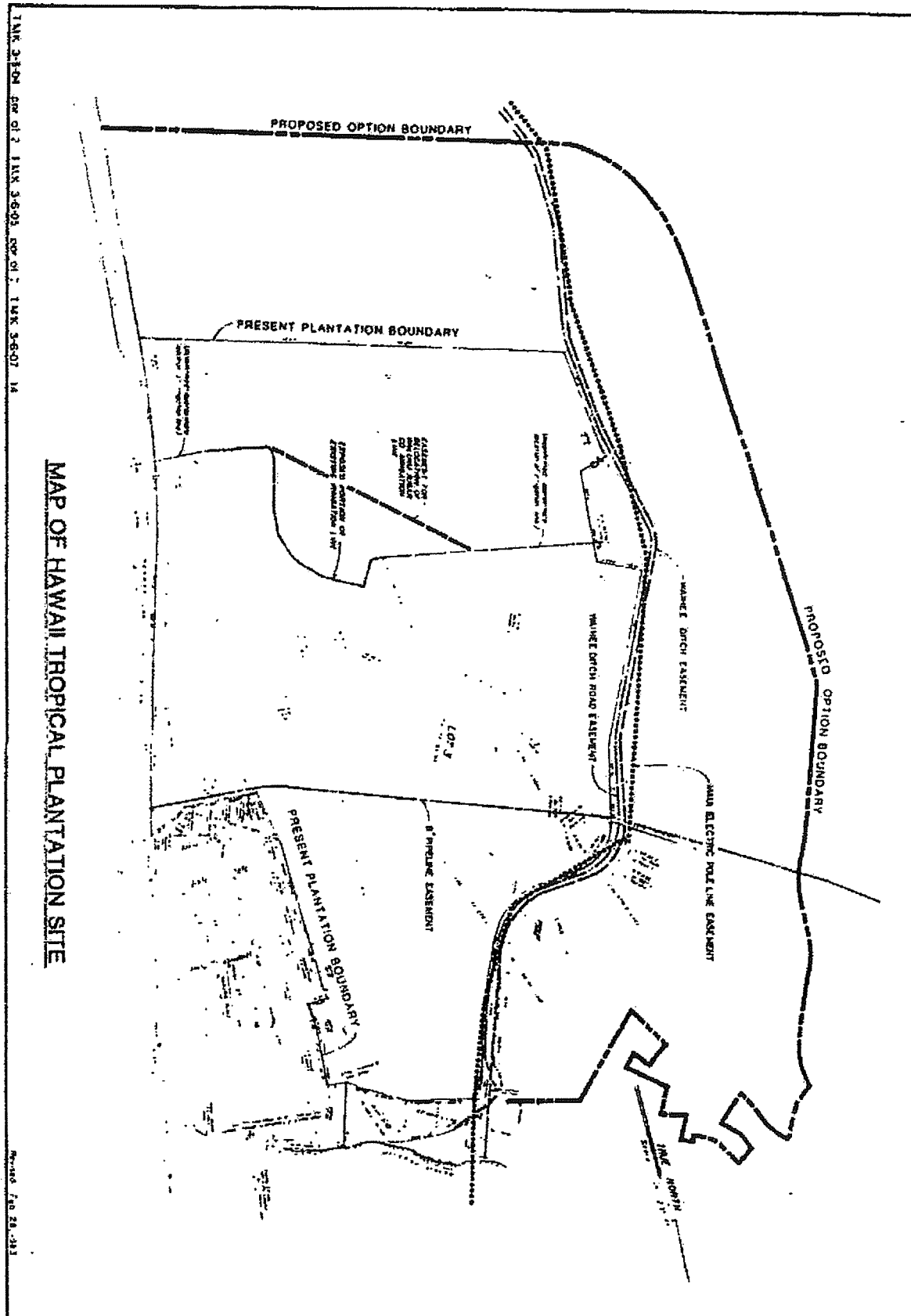
-  - Property included in this conveyance
-  - Property not included in this conveyance

SCHEDULE D



LOT 1







R-732

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JAN 27, 2006 08:02 AM

Doc No(s) 2006-017392

/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

CTax (35): \$28000.00

20 1/1 Z9

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Maui Tropical Plantation
1670 Honoapiilani Highway
Wailuku, HI 96793

Tax Key: (2) 3-6-005-007

Total No. of Pages: 1920¹²LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That THE HAWAII TROPICAL PLANTATION, a Hawaii limited partnership, whose address is 1670 Honoapiilani Highway, Wailuku, Hawaii 96793, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by LARRY W. ANDERSON and GEORGEANN M. ANDERSON, husband and wife, whose mailing address is c/o Anderson Homes, 1420 South Mills Ave., Suite A, Lodi, California, 95241 (collectively the "Andersons"), MICHAEL W. ATHERTON DEVELOPMENT, INC., a California corporation whose

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address is 1132 Norman Drive, Manteca, California, 95336 ("Atherton Corp."), WILLIAM S. FILIOS, Trustee of the William Filios Separate Property Trust dated April 3, 2000 whose address is 5348 St. Andrews Drive, Stockton, California, 95219 ("Filios"), BOYCE HOLDINGS, INC., a California corporation whose address is 120 Manteca Avenue, P.O. Box 1870, Manteca, California, 95336 ("BHI"), BOYCE RESOURCE DEVELOPMENT COMPANY, a California corporation whose address is 120 Manteca Avenue, P.O. Box 1870, Manteca, California, 95336 ("BRDC"). The Andersons, Atherton Corp., Filios, BHI and BRDC are collectively called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee as tenants in Common (with the Andersons holding an undivided fifty-percent (50%) interest as community property between them, Atherton Corp. holding an undivided sixteen and 667/1000 percent (16.667%) interest, Filios holding an undivided sixteen and 667/1000 percent (16.667%) interest, BHI holding an undivided eight and 333/1000 percent (8.333%) interest and BRDC holding an undivided eight and 333/1000 percent (8.333%) interest, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); subject, however, to all encumbrances noted on said Exhibit "A".

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and

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appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances made by persons claiming by, through or under the Grantor, except the liens and encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an

original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

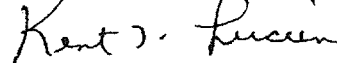
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IN WITNESS WHEREOF, the Grantor and Grantee have
executed these presents on this ____ day of JAN 25 2006,
20__.

Grantor: THE HAWAII TROPICAL PLANTATION.

By WAILUKU PLANTATIONS, INC.

Its General Partner



By: Kent T. Lucien

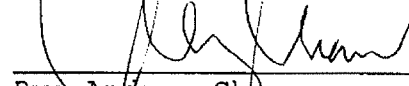
Its: Chairman

By TOYAMA HTP, LLC

Its General Partner

By: Toyama Maui Plantation, Inc.


Its: Sole Member


By: Andrey Chan

Its: Vice President

Grantee:


LARRY W. ANDERSON


GEORGEANN M. ANDERSON

MICHAEL W. ATHERTON DEVELOPMENT, INC.

By: MICHAEL W. ATHERTON

Its: President

IN WITNESS WHEREOF, the Grantor and Grantee have
executed these presents on this ____ day of _____,
20____.

Grantor: THE HAWAII TROPICAL PLANTATION.

By WAILUKU PLANTATIONS, INC.
Its General Partner

By: Kent T. Lucien
Its: Chairman

By TOYAMA HTP, LLC
Its General Partner

By: Toyama Maui Plantation, Inc.
Its: Sole Member


By: Andrey Chan
Its: Vice President

Grantee:

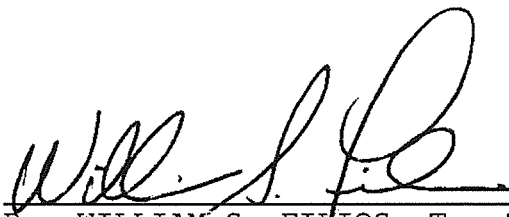
LARRY W. ANDERSON

GEORGEANN M. ANDERSON

MICHAEL W. ATHERTON DEVELOPMENT, INC.



By: MICHAEL W. ATHERTON
Its: President



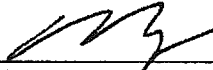
By: WILLIAM S. FILIOS, Trustee of The
William Filios Separate Property dated
April 3, 2000

BOYCE HOLDINGS, INC.



By: ALBERT G. BOYCE, V
Its: President

BOYCE RESOURCE DEVELOPMENT COMPANY



By: ALBERT G. BOYCE, V
Its: Vice-President

STATE OF HAWAII)
)
CITY AND COUNTY OF ~~MAUI~~ ^{Maui} HONOLULU) SS.

On this 23rd day of January, 2006, before me personally appeared **KENT T. LUCIEN**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

L.S.

Nancy H. Sueyoshi
Print Name: Nancy H. Sueyoshi
Notary Public, State of Hawaii.

My commission expires: 4-13-2007

STATE OF HAWAII)
)
COUNTY OF ~~MAUI~~ ^{Hawaii}) SS.

On this 23rd day of January, 2006, before me personally appeared **ANDREY CHAN**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

L.S.

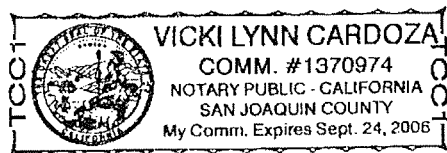
Haidee O. Kanakanaui
Print Name: Haidee O. Kanakanaui
Notary Public, State of Hawaii.

My commission expires: 3-23-2007

State of California)
) ss.
County of San Joaquin)

On January 23, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared **MICHAEL W. ATHERTON, WILLIAM S. FILIOS, and ALBERT G. BOYCE V**, personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Vicki Lynn Cardozo
Notary Public

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 25th day of January, 2006, before me personally appeared **LARRY W. ANDERSON** and **GEORGEANN M. ANDERSON**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

W

Kristi Lynn E. Heoka
Print Name: Kristi Lynn E.S. Heoka
Notary Public, State of Hawaii

My commission expires: May 1, 2009

EXHIBIT "A"

All of that certain parcel of land, being portions of Grant 2960 to J. Boardman; Grant 2069 to Kaai; R. P. 498, L. C. Aw. 236-1:1 to Charles Copp; Grant 2904 to John Crowder; Grant 3043 to J. Boardman; Grant 3152 to Henry Cornwell; R. P. 3130, L. C. Aw. 8874:1 to Kaneae; R. P. 102, L. C. Aw. 432 to Anthony Silva; and R. P. 4014, L. C. Aw. 5774:2 to Kaai; and all of R. P. 3139, L. C. Aw. 491:2 to Haawahine; R. P. 3130, L. C. Aw. 8874:2 to Kaneae R. P. 3139, L. C. Aw. 491:1 to Haawahine; R. P. 3139, L. C. Aw. 491:3 to Haawahine; R. P. 3156, L. C. Aw. 3527:1 to Kamohai L. C. Aw. 462-1 to Mahuka; Grant 2747:2 to Eugene Bal; Grant 1674 to E. W. Gleason; L. C. Aw. 462:2 to Mahuka; R. P. 6374, L. C. Aw. 5324:2 to Keakini; R. P. 3130, L. C. Aw. 8874:3 to Kaneae; R. P. 4014, L. C. Aw. 5774:4 to Kaai; R. P. 324, L. C. Aw. 455:2 to Haa; Grant 2342 to E. Bal; R. P. 41, L. C. Aw. 416:2 to John Crowder; R. P. 41, L. C. Aw. 416:1 to John Crowder; Grant 1146 to Antonio Sylva; and R. P. 3148, L. C. Aw. 10160:4 to Mahoe; being Hawaii Tropical Plantation Site, situated on the westerly side of Honoapiilani Highway, F.A.P. 13-G, at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, and more particularly described as follows:

Beginning at a point at the southeast corner of this parcel of land, the coordinates of which point of beginning referred to Government Survey Triangulation Station "Luke" being 12,323.76 feet south and 3,181.31 feet west and running by azimuths measured clockwise from true south:

- | | | |
|----|----------|---|
| 1. | 106° 45' | 1,319.23 feet along the remainder of
Grant 3043 to J. Boardman,
Grant 2960 to J. Boardman,
Grant 3152 to Henry Cornwell; |
| 2. | 174° 00' | 302.03 feet along the remainder of
Grant 2960 to J. Boardman; |
| 3. | 166° 40' | 40.00 feet along same; |
| 4. | 255° 00' | 91.00 feet along same; |
| 5. | 185° 10' | 285.00 feet along same and the
remainder of Grant 2069 to
Kaai; |

6. 115° 55' 142.26 feet along the remainder of Grant 2069 to Kaai;
7. 206° 15' 539.15 feet along same;
8. 193° 30' 243.00 feet along same and the remainder of R. P. 3130, L. C. Aw. 8874:1 to Kaneae;
9. Thence along the remainder of R. P. 3130, L. C. Aw. 8874:1 to Kaneae; R. P. 4014, L. C. Aw. 5774:2 to Kaai and R. P. 498, L. C. Aw. 236-I:1 to Charles Copp on a curve to the right having a radius of 151.00 feet, the chord azimuth and distance being:
229° 17' 30" 176.62 feet;
10. 265° 05' 125.00 feet along the remainder of R. P. 498, L. C. Aw. 236-I:1 to Charles Copp;
11. Thence along same on a curve to the left having a radius of 230.00 feet, the chord azimuth and distance being:
235° 12' 30" 229.13 feet;
12. 205° 20' 195.00 feet along same;
13. 196° 50' 209.00 feet along same;
14. 212° 10' 88.31 feet along same;
15. 283° 30' 208.78 feet along R. P. 4104, L. C. Aw. 5774:1 to Kaai;
16. 301° 30' 195.00 feet along Grant 3152 to Henry Cornwell;
17. 276° 46' 57.80 feet along R. P. 102, L. C. Aw. 432 to Anthony Sylva;

- | | | | | |
|-----|---|-----|-------|--|
| 18. | 4° | 14' | | 160.90 feet along the remainder of
R. P. 102, L. C. Aw. 432 to
Anthony Sylva; |
| 19. | 357° | 05' | | 61.60 feet along same; |
| 20. | 354° | 18' | | 33.54 feet along same; |
| 21. | 86° | 01' | | 63.90 feet along same; |
| 22. | 351° | 55' | | 40.00 feet along R. P. 102, L. C.
Aw. 432 to Anthony Sylva; |
| 23. | 359° | 06' | | 455.70 feet along same; |
| 24. | 349° | 25' | | 172.20 feet along same and Grant
1515 to Antonio Sylva; |
| 25. | 274° | 06' | | 222.20 feet along same; |
| 26. | 246° | 49' | | 138.02 feet along the remainder of
Grant 2904 to John Crowder; |
| 27. | Thence along the westerly side of Honoapiilani Highway,
F.A.P. 13-G, on a curve to
the right having a radius of
12,242.70 feet, the chord
azimuth and distance being: | | | |
| | 15° | 54' | 18.5" | 563.99 feet; |
| 28. | 17° | 13' | 30" | 296.94 feet along same; |
| 29. | Thence along same on a curve to the left having a radius
of 2,899.93 feet, the chord
azimuth and distance being: | | | |
| | 10° | 51' | 30" | 643.15 feet; |
| 30. | 4° | 29' | 30" | 16.00 feet along same to the
point of beginning and
containing an area of 59.054
acres, more or less. |

Together with the following easements appurtenant
to the land herein conveyed as set forth in Deed recorded
March 24, 1983 in the Bureau of Conveyances of the State of

Hawaii in Liber 16933 on Page 469, made by Wailuku Sugar Company, a Hawaii corporation, as "Grantor", and the Hawaii Tropical Plantation, a Hawaii limited partnership, as "Grantee":

1) A perpetual easement and right to discharge surface water runoff, from the parking lot and other improved areas from time to time constructed on the land herein conveyed, into existing drainage channels and culverts paralleling Honoapiilani Highway situated within Second Division Tax Map Key 3-6-4-1.

2) A perpetual easement and right to install, replace, maintain, repair and use, within Tax Map Key 3-6-4-1, (a) a waste water pipeline, and (b) an injection well or wells, together with the non-exclusive right of ingress thereto and egress therefrom over the grantor's adjoining land, the exact location of the waste water pipeline easement and the injection well easements to be designated by the grantee, subject to the approval of the grantor, which approval shall not be unreasonably withheld.

3) As an alternative to the easement provided for in paragraph 2 above, at the option of grantee, a perpetual easement and right to install, replace, maintain, repair and use, a waste water pipeline, together with the non-exclusive right of ingress thereto and egress therefrom, over the grantor's adjoining lands to the north, to connect with the public sewerage pipeline servicing the new Wailuku Heights development; the exact location of the waste water pipeline easement will be designated by the grantee, subject to the approval of the grantor, which approval shall not unreasonably be withheld taking fully into account the economic and technical conclusions of the civil engineering study, now being undertaken at the request of grantor and grantee with respect to the pipeline and its connection to the public sewerage pipeline; grantee shall further have the right to use any easements or rights of way available to grantor for the purpose of enabling the waste water pipeline to cross under or over Waikapu stream, Waiko Road and Kuikahi Drive to connect with the Wailuku Heights sewerage pipeline to the north of the latter road.

4) A perpetual easement and right to install, replace, maintain, repair and use, within the area labeled Proposed Water Storage Easement and Proposed Water Pipeline Easement, (a) a water storage tank, and (b) water pipelines between the western boundary of the land herein conveyed and the aforesaid water storage tank, together with the non-exclusive right of

ingress thereto and egress therefrom over the grantor's adjoining land, the exact location of the water pipeline easements and the water storage tank easement to be designated by the grantee (within an area not to exceed 5,000 square feet for the storage tank and fifteen feet wide for the water pipeline easements), subject to the approval of the grantor, which approval shall not be unreasonably withheld.

5) A perpetual nonexclusive waterline easement in the area designated Proposed Waterline Extension by C. Brewer, for waterlines to connect to the existing public waterline at the corner of Kemoa Place and Wilikona Place, and thence running to the northern boundary of the land herein conveyed, subject to the right of grantor to dedicate the proposed waterline extension of the County of Maui for public purposes.

6) A perpetual nonexclusive easement for roadway purposes, for maintenance and agricultural support, but not for movement of visitors except to the extent approved by grantor, over and across the existing dirt road; (i) in Second Division Tax Map Key 3-6-4-2 and 3-6-5-7 commencing at Honoapiilani Highway, approximately 180 feet north of the southern property line of the land herein conveyed, thence running in a westerly direction to the vicinity of Waihee ditch, thence in a northerly direction between Waihee ditch and the western boundary of the land herein conveyed, (ii) in Second Division Tax Map Key 3-6-5-7 over and across R. P. 4014 L. C. Aw. 5774:1 to Kaai and Grant 3152 to Henry Cornwell (reserving, however, unto the grantor the right to relocate said existing dirt road); and (iii) in Second Division Tax Map Key 3-6-4-2 over and across the existing 12 ft. wide right-of-way easement to Honoapiilani Highway.

Grantor shall have the right to realign but not materially relocate those portions of said roadway described in (i) and (iii) above.

The easements described in paragraphs 2(b) and 4(a) shall be exclusive easements. The easements described in paragraphs 2(a), 3 and 4(b) shall be nonexclusive and grantor reserves the right to use the easement areas for purposes which do not interfere with grantee's use of the easements but grantor shall not grant easements to third parties in the easement areas unless grantor shall require the third party to agree for the benefit of grantee not to interfere with grantee's use of the easements.

Together, further, with a non-exclusive easement for drainage purposes over, under and across Tax Map Keys (2) 3-7-002-001 and 003 as an appurtenance to the premises described herein, as granted by Easement for Drainage by and between Wailuku Agribusiness Co., Inc., a Hawaii corporation, as Grantor, and the Hawaii Tropical Plantation, a Hawaii limited partnership, as Grantee, recorded July 7, 2005 in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-134398. Said easement being more particularly designated on map attached thereto.

Being a portion of the land conveyed by:

1. Deed recorded March 24, 1983 in the said Bureau of Conveyances in Book 16933 on Page 469, from Wailuku Sugar Company, a Hawaii corporation, as Grantor, to The Hawaii Tropical Plantation, a Hawaii limited partnership, as Grantee;

2. Order Granting Plaintiff's Ex Parte Motion for Default Judgment and Judgment recorded January 27, 1992 in the Second Circuit Court, State of Hawaii, with Civil No. 91-0615(2), recorded January 28, 1992 as Document No. 92-012856.

3. Order Granting Plaintiff's Ex Parte Motion for Default Judgment and Judgment recorded January 27, 1992 in the Second Circuit Court, State of Hawaii, with Civil No. 91-0638(1) recorded January 28, 1992 as Document No. 92-012857.

4. Order Granting Plaintiff's Ex Parte Motion for Default Judgment and Judgment recorded March 20, 1992 in the Second Circuit Court, State of Hawaii, with Civil No. 92-0026(1), recorded March 23, 1992 as Document No. 92-042396.

5. Order Granting Plaintiff's Ex Parte Motion for Default Judgment and Judgment recorded March 30, 1992 in the Second Circuit Court, State of Hawaii, with Civil No. 91-0846(2), recorded April 1, 1992 as Document No. 92-048227.

6. Order Granting Plaintiff's Ex Parte Motion for Default Judgment and Judgment recorded January 25, 1992 in the Second Circuit Court, State of Hawaii, with Civil No. 92-0278(2) recorded June 26, 1992 as Document No. 92-102263.

7. Order Granting Plaintiff's Ex Parte Motion for Default Judgment and Judgment recorded March 30, 1993 in the Second Circuit Court, State of Hawaii, with Civil No. 92-0495(1) recorded April 1, 1993 as Document No. 93-052637.

8. Judgment recorded August 30, 1995 in the Second Circuit Court, State of Hawaii, with Civil No. 93-0022(1), recorded August 31, 1995 as Document No. 95-112738.

SUBJECT, HOWEVER, to the following:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.

2. Rights of the Native Tenants as reserved in Grant Nos. 1146, 2342, 2747, 2904, 2960 and 3043.

3. Commutation due, if any, to the State of Hawaii on Land Commission Award No. 462.

4. The effect, if any, of the location of Apana 4 of Land Commission Award No. 10,160, Royal Patent No. 3143 to MAHOE within Tax Map Key: (Maui) 3-6-05-07, as disclosed by Wailuku Sugar Company Map, as prepared by M. D. Monsarrat, dated October, 1882.

5. A Grant of Easement for utility purposes, in favor of Maui Electric Company, Limited, a Hawaii corporation, recorded in the said Bureau of Conveyances in Book 9921 on Page 1.

6. Reservations in favor of Wailuku Sugar Company, a Hawaii corporation, as set forth or disclosed by the Deed recorded March 24, 1983 in the said Bureau of Conveyances in Book 16933 on Page 469, as follows:

"RESERVING, HOWEVER, unto the Grantor and its successors and assigns:

1) A perpetual nonexclusive easement and right to install, replace, maintain, repair and use, in the easement area, an underground water pipeline, together with the right of ingress thereto and egress therefrom over the land herein conveyed, subject to that certain unrecorded Agreement concerning water pipeline of even date herewith.

2) A perpetual exclusive easement to maintain, repair and use that portion of the existing Waihee Ditch situated on any portion of the land herein conveyed.

3) A perpetual nonexclusive easement to maintain, repair and use the settling pond.

4) A perpetual nonexclusive easement for roadway purposes over and across the portion of the existing dirt road described in Item 6 of Grantee's appurtenant easements situated on any portion of the land herein conveyed.

5) A perpetual nonexclusive easement and right to install, replace, maintain and use, in the easement area shown as "8" water pipeline easement, together with the right of ingress thereto and egress therefrom over the land herein conveyed.

6) And, excepting from this Deed, all surface waters and ground waters and water rights including any applicable riparian or other appurtenant or prescriptive rights as may now or hereafter exist with respect to the property or any part hereof; provided, however, that this exception is subject to the provisions of that certain unrecorded Water Agreement which provides in certain circumstances, for the right of Grantee, to drill a well or wells and to draw therefrom up to 500,000 gallons of water per day."

7. A Grant of Easement for utility purposes, in favor of Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telephone Company, a Hawaii corporation (now known as GTE Hawaiian Telephone Company Incorporated) (now Verizon Hawaii Inc.), recorded October 11, 1983 in the said Bureau of Conveyances in Book 17375 on Page 408.

8. The terms and provisions contained in the Farm Dwelling Agreement recorded November 14, 1983 in the said Bureau of Conveyances in Book 17452 on Page 64.

9. The terms and provisions contained in that certain Undated Agreement made by and between Wailuku Sugar Company, as "WWCO", Hawaii Tropical Plantation, a limited partnership, as "Developer", and the County of Maui and the Department of Water Supply, County of Maui, as "County" recorded May 16, 1984 in the said Bureau of Conveyances in Book 17877 on Page 754, made by and between Wailuku Sugar Company, as "WSCO"; Hawaii Tropical Plantation, a limited partnership, as

"Developer", and the County of Maui and the Department of Water Supply, County of Maui, as "County".

10. A Grant of Easement for utility purposes, in favor of Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telephone Company, a Hawaii corporation (now known as GTE Hawaiian Telephone Company Incorporated) (now Verizon Hawaii Inc.), recorded February 2, 1987 in the said Bureau of Conveyances in Book 20331 Page 23.

11. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Tide 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Unilateral Agreement and Declaration for Conditional Zoning recorded July 23, 1992 in the said Bureau of Conveyances as Document No. 92-118788.

12. Department of Taxation, Tax Map Bureau of the State of Hawaii, covering Tax Map Key 3-6-0507, discloses the following:

a) Cane flame running over, across and through a portion of the land herein described, and colored in green and attached hereto as Exhibit "B".

b) Waihee Ditch running along a portion of the land herein described.

c) Easement "A", 15 feet wide, containing an area of 23,443 square feet, running over, across and through a portion of the land herein described, and colored in yellow and attached hereto as Exhibit "B".

d) Easement "B", 10 feet wide, containing an area of 17,638 square feet, running over, across and through a portion of the land herein described, and colored in orange and attached hereto as Exhibit "B".

e) Easement "D", 5 feet wide, containing an area of 175 square feet, running over, across and through a portion

of the land herein described, and colored in blue and attached hereto as Exhibit "B".

13. The terms and provisions contained in the Private Fire Protection System Agreement recorded January 31, 1997 in the said Bureau of Conveyances as Document No. 97-015395.

14. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.

15. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.

END OF EXHIBIT "A"

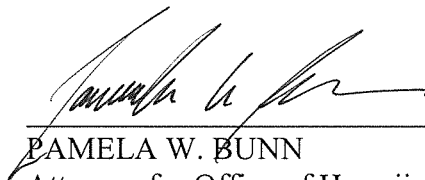
Tax Key: (2) 3-6-005-007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the *Objection to an Appurtenant Rights Claim* to be served on the following Applicant by U.S. mail, postage prepaid (as indicated below) to its respective address:

MTP Operating Company, LLC, dba
Maui Tropical Plantation
1670 Honoapiilani Hwy.
Wailuku, HI 96793

DATED: Honolulu, Hawai'i, September 19, 2012.

A handwritten signature in black ink, appearing to read 'Pamela W. Bunn', is written over a horizontal line.

PAMELA W. BUNN
Attorney for Office of Hawaiian Affairs